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15 **UNITED STATES BANKRUPTCY COURT**

16 **DISTRICT OF NEVADA**

18 In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.	Case No. BK-S-06-10725 LBR Case No. BK-S-06-10726 LBR Case No. BK-S-06-10727 LBR Case No. BK-S-06-10728 LBR Case No. BK-S-06-10729 LBR
20 In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.	Chapter 11
22 In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.	Jointly Administered Under Case No. BK-S-06-10725-LBR
24 In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.	

1 In re:
 2 USA SECURITIES, LLC,
 3
 4

Debtor.

**AMENDED JOINT EX PARTE
 APPLICATION FOR ORDER
 REQUIRING MICHAEL ZITO TO
 APPEAR FOR EXAMINATION
 PURSUANT TO FEDERAL RULE OF
 BANKRUPTCY PROCEDURE 2004**

[No hearing required]

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA First Trust Deed Fund, LLC

Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (hereinafter, the "Bankruptcy Rules"), USA Capital Diversified Trust Deed Fund, LLC (hereinafter, "Diversified"), and the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (hereafter, the "Diversified Committee"), by and through their respective counsel noted above,¹ hereby apply to this Court for an order setting the examination of Michael Zito, under oath, under Bankruptcy Rule 2004. This Application is explained in the following Memorandum.

MEMORANDUM

Diversified and the Diversified Committee are seeking information from Michael Zito concerning the obligation owed to Diversified and others by BySynergy, LLC, collateral securing that obligation, the status of development of the collateral, and other liens on the collateral. Diversified and the Diversified Committee seek this information to assist in the collection of the assets and investigation of the liabilities of Diversified.

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¹ Diversified and the Diversified Committee make this Application jointly because counsel for the Diversified Committee will become counsel to the reorganized Diversified entity subsequent to the Effective Date under the Debtors' Third Amended Chapter 11 Plan, which was confirmed by the Court pursuant to its order entered January 8, 2007.

The requested discovery from the Custodian of Documents for BySynergy, LLC is well within the scope of the examination permitted pursuant to Bankruptcy Rule 2004, which includes:

[A]cts, conduct, or property or . . . the liabilities and financial condition of the debtor, or . . . any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a . . . reorganization case under chapter 11 of the Code, . . . the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefore, and any other matter relevant to the case or to the formulation of a plan.

Fed.R.Bankr.P. 2004(b).

Bankruptcy Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” Rule 2004 of the Local Rules of Bankruptcy Procedure (hereinafter, the “Local Rules”) provides, in pertinent part:

(b) Order for examination. Orders for examination may be signed by the clerk if the date set for examination is more than ten (10) business days from the date such motion is filed....

LR 2004(b).

As required by the Local Rules, the date for the proposed examination is more than ten (10) business days from the date of this Motion.

CONCLUSION

Accordingly, Diversified and the Diversified Committee respectfully request that the Clerk of the Court docket the form of Order submitted herewith requiring the Custodian of Records for BySynergy, LLC, to testify under oath on the matters outlined above and requiring that the Custodian of Records for BySynergy, LLC, under Rule 30(b)(6) of the Federal Rules of Civil Procedure be required to appear on February 16, 2007, at 11:00 o'clock a.m. Mountain

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1 Standard Time at the Residence Inn By Marriott, 3440 North Country Club Dr., Flagstaff,
2 Arizona 86004.

3 Respectfully submitted this 18th day of January 2007.

4 BECKLEY SINGLETON, CHTD.

RAY, QUINNEY & NEBEKER, P.C.

5 /s/ Anne M. Loraditch

/s/ Steven C. Strong

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14 Trust Deed Fund, LLC*

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